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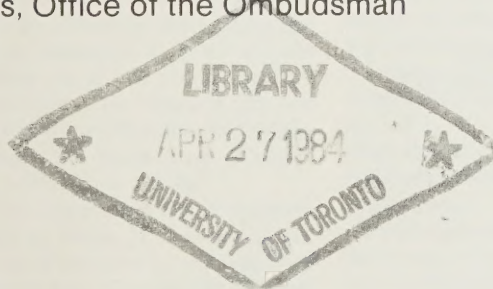
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Legislative Assembly of Ontario

Select Committee on the Ombudsman

Estimates, Office of the Ombudsman



Third Session, 32nd Parliament

Wednesday, November 2, 1983

Speaker: Honourable John M. Turner
Clerk: Roderick Lewis, QC

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON THE OMBUDSMAN

Wednesday, November 2, 1983

The committee met at 9:45 a.m. in room 228.

ESTIMATES, OFFICE OF THE OMBUDSMAN

Mr. Chairman: This is the first opportunity for the committee to review the estimates of the Office of the Ombudsman. I gather from speaking to Mr. McArdle before we got under way that he has no statement to make at this time. I wonder if the official opposition has. Mr. Breithaupt?

Mr. Breithaupt: No, Mr. Chairman. I am new at this, having just been appointed to the committee for at least an interim period.

I found it interesting at our conference in Vancouver to see how the structure and development of the Ombudsman theme has landed on pretty well every continent; indeed, not only from nations but from states and cities within the United States as well as, of course, the provinces and the involvement of the four federal officers with those particular duties.

I would be interested today in talking about the office structure. Certainly, the relative size of our operation, compared to those of most others, does strike you at first glance. I recognize that the size has to be balanced with the kinds of duties which our office does in comparison with perhaps the much more selective duties of other ombudsmen offices.

I would like an explanation of the comparison. In looking at some of the documents presented to us in Vancouver, it appeared, for example, that there were 37 people on the staff in British Columbia. Here we showed a complement of 121, as I recall.

Much of it may be explained by our need to have regional offices because of the size of the province. That also might be a factor even in British Columbia, while it obviously would not be a factor in many nations whose areas are smaller and much easier to get around. I would be interested in hearing about that kind of scene.

I would also like to have a report on the operations of the regional offices and how they are developing. Is dealing with particular complaints by the fast-action approach able to resolve many of those situations in the Ottawa

area—although it has just begun—and also in the northern Ontario locations?

What progress is there for further decentralization? Is it the intention, for example, to only have those offices which we now have developed? Is there to be a further division—something in London or however it might be decided to further divide the province if that is worth while?

I would also like to know the relationship between the numbers of persons on staff, the administrators and the numbers who are involved in actually dealing with cases. How many staff people are involved in immediately monitoring complaints? What backup is available as far as legal and other persons to assist them are concerned? It is just so that I know how the office is operating.

It would seem to me, having been involved at that famous meeting of the Board of Internal Economy, representing my caucus, when we had certain discussions with Arthur Maloney, the first Ombudsman, on the nature and structure of the office, it certainly seems to me that the attitudes have changed substantially.

I believe that this committee, in its maturity now, has developed a stronger relationship with the office. As well, the senior people in the Ombudsman's office seem to me to be more comfortable with this relationship. I hope that will continue.

I understand that the committee's function is to be supportive. I hope it is viewed that way not only by the staff of the Ombudsman's office but also by the other members of the Legislature.

One of the things I have sensed in the last few years is that not as many members are actively using the Ombudsman's services as might be the case. Perhaps they are concerned about the size of the bureaucracy that may be developing there or the four- or five-page letters that go out to people, as opposed to a more crisp dealing with constituent problems that they are used to. I do not know.

As I look around at many of my colleagues who are much more involved than I might be with constituents' problems in the part of the province they represent, it seems to me that they do not consider the Ombudsman's office as

a reinforcing source. That may be because my operation is somewhat easier than it is for many members of the Legislature.

In Kitchener, we have a regional office of the Workers' Compensation Board, an unemployment insurance office and a social planning council that has an information service. I might add that there is a Canada pension plan regional office as well. In areas such as this, many of the problems that other members may have sort themselves out without ever coming to the office. They also can be dealt with very quickly by an immediate phone call or by suggesting a person simply go down the street.

For many members, those kinds of offices are simply not possible, and the member becomes the lightning rod for everyone's concerns and has a very heavy case-load problem.

I sense that members are not using the Office of the Ombudsman to full advantage; there may be a variety of reasons. Surely one of the tasks of the office is to develop and to maintain credibility within the Legislature to deal with that conception.

I may well be faced with a response from Mr. McArdle of a list of 124 members who have used the Ombudsman's services recently, and my name may be the only one not there; I do not know. I would be interested in knowing just how much members of the Legislature use the services. I have the sense that it is not as good as it might be.

For the health of this committee, it would be useful to know what the relationship is, since our members have to justify to a degree the operations of the committee to our colleagues who may have opinions one way or the other as to the usefulness of this committee's work. I think it would be healthy or helpful if the office is to thrive.

Mr. Philip: This is also my first opportunity to put on the record some observations and concerns I have as the new critic of the Office of the Ombudsman, along with Management Board, the Ministry of Government Services, the Provincial Auditor and other things that parties that have as many seats as we have manage to do to people.

I would like to start by saying that, coming from a management training background, I am extremely impressed with the quality of the Ombudsman's staff. I have had to deal with, hire and supervise various types of professions, and I must say that the quality of those people who are in the helping kinds of roles impresses me.

It is terribly important that the Ombudsman

and the people in upper administrative roles understand that and consult with them, because of all the various professional staffs I have seen, few are of the same quality. They are the type of people who do not have, what I would call, in professional terms, the nine-to-five mentality. I am sure they work a lot of hours at home. Therefore, I would like to simply say that this is a general impression, and I think a lot of my colleagues have the same impression.

I serve on a number of committees in this Legislature; indeed, I have been chairman of one for a number of years until recently. I know of no committee that works better than this one, in terms of nonpartisanship, in terms of dealing with the Ombudsman in a way that office should be dealt with as a nonpartisan committee. That is not true of other committees. Perhaps the recent one on family violence managed to rise to that kind of stature.

I have enjoyed working with my colleagues from all the different parties on this committee, and I think we have been able to form a team which impresses me and with which I feel comfortable. We also have a clerk who is second to none. Until recently, he was a magnificent clerk of the public accounts committee and did a tremendous job in that capacity. We hope he will be staying with this committee—I will not say any more on that for fear of overstating my case.

One concern I have, with the new Ombudsman being appointed, is with the appointment process in Ontario. I was quite impressed with the Ombudsman of British Columbia, impressed with him as a person, with his knowledge, and his operations. I found the way in which he was appointed very interesting.

As I understand it, the government screened some 410 applicants and gave a short list to the committee. But it was the role of the parties to come not to a majority opinion, but to a consensus opinion on those 10. From that, Dr. Karl Friedmann was the choice. There was a consensus choice.

I find it quite disturbing—I have said it publicly, and I might as well say it on the record when I say it to the media—that the chairman of this committee has not been consulted on the appointment of the new Ombudsman, even though he is a member of the ruling party.

I find it equally disturbing that this committee has not had its views sought, if not as to who the specific candidate should be at least to the qualities that we should look for in the Ombuds-

man. I think that would have been a reasonable step by the Premier (Mr. Davis).

When a committee is trying to work with a person of the Ombudsman's stature in such a nonpartisan way that requires close co-operation, it would have been terribly helpful if the BC model had been adopted by the Premier and if we could have started off as a committee, whenever the new Ombudsman is appointed, with the knowledge that she or he, as the case may be, was our choice. Not a choice in the sense of saying, "We want Joe Blow or so-and-so," but at least that we were forced to come to a consensus as to the best person out of the leading contenders.

I think that would have given us a feeling of empathy, understanding, of attachment to the Ombudsman whenever he or she took office.

10 a.m.

I am disappointed that this government does not see fit to do that. I think that would have been in keeping with the rather good relationship we have in this committee in a nonpartisan nature.

One of the themes discussed at the ombudsmen's convention is that there are different approaches and philosophies to the role of the ombudsman, just as there are different approaches to being the Auditor General, which is the closest analogous kind of situation—the Auditor General, working with the public accounts committee to safeguard the rights of the taxpayer, and the ombudsman working to safeguard the rights of the citizen. I find that interesting. There were a number of statements that came out relating to that.

First, I think Friedmann certainly saw his role as an active one. That is, it was not a matter of waiting for complaints to happen but, rather, of actively going out and anticipating where there would be problems and looking into them; of trying to see patterns and of commenting less on an individual injustice but rather on the need to change the system. I see that as an important role of the Ombudsman.

We had the case given to us, as I recall by—what was the anthropologist's name—Dr. Nader, who talked about how there was a politician, I gather, in Manhattan who continued to perpetuate injustice by solving everybody's problems. As long as people continued to come to him, he would fix the individual problems, win votes and get re-elected.

The real emphasis should have been to change the structure so that those problems were

remedied and those people did not owe something to that politician.

It seems to me that should be a major focus of the Ombudsman. It should be within his jurisdiction to comment on policy and to spell out principles of policy.

I found that very interesting in the annual report of the BC Ombudsman, in which he comes out with some fairly concrete principles—principles which I find are being violated in Ontario and that should be looked at.

For example, it is fairly clear that a number of the principles that he spells out—and I would be happy to give examples to the Ombudsman—are being violated by the Housing and Urban Development Association of Canada home warranty program over and over again. I can give ample examples of that happening. One of the principles is that people should be given enough notice in which to make an appeal and that they should understand what the rules are. The HUDAC home warranty program does not give that.

Another example is that people should not arbitrarily have their rights cut off on the simple assumption that they should know what those rights are. A good example of that again is the HUDAC home warranty program, where I do not think people really understand that they have to report a complaint not just to the builder but also to the warranty people.

I found—and I am just using the one example—in dealing with the HUDAC home warranty program that when I went and did a heavy, then we usually got results. I think that again goes back to the old fence-mending politician doing a favour for constituents. As long as they have Ed Philip to go and embarrass the government, and get up in the House and make a lot of noise, and go to the press and do that kind of thing, then these people will have their problems solved. But the poor guy who has for a member a back-bencher who, because of his political party, cannot very well go out and embarrass the government publicly, or the guy who may not know his MPP or may not think of going to him, gets a different kind of justice. It seems to me that it would be worth while for the Ombudsman to go into programs like the HUDAC home warranty program not on a specific complaint but rather just to examine whether due process is being done.

I have a very good example, I think, of an injustice that I was going to bring to the Ombudsman. It is related directly to me personally. But this week, I had another example from

a woman. A couple of years ago I filled out the application and a doctor filled out the application for extended care for my mother, and it was granted. It turned out that we decided there were alternatives, and we did not put her in a government-subsidized residence; she could exist with some other support systems that perhaps were costly to us but saved the government some money.

Then more recently we made an application for her again because those limited support systems were simply not working and she was getting to the point where she needed more care. This time it was turned down. Now, here is a senior who had a grade 6 education and who could barely see to read. She received a letter that gave her absolutely no reason why she was turned down and that said she had 15 days to appeal that decision.

I say to you, this kind of process is wrong and you should deal with it not just as an individual case—and I would be happy to give you a copy of my mother's application that was turned down, not for you to handle hers because, unfortunately, she passed away last week—but rather on the principle that it is wrong not to tell people why they have been denied acceptance into a particular service and that it is wrong to say they have 15 days in which to appeal.

I had an example in the HUDAC home warranty program a while back that involved the same issue. A fellow went home to Italy. He made an application then for assistance under the HUDAC home warranty program. They sent him their report. He had, I think, a month to appeal; it was originally 15 days, but they have raised it because I yelled and screamed—or maybe it is a little bit longer. Anyway, he got back and then he was denied simply because the poor guy was out of the country visiting relatives. That seems to be an unreasonable way in which due process is cut off, and that is one of the themes I see in a lot of these bodies that have judicial or quasi-judicial powers over people.

Some of us also have suspicions about certain things. For example, I was told that under the extended care program quite often the procedure now is to turn down people and let them appeal. Certainly, that is a suspicion that we as politicians and the public have about the Community and Social Services payments for children with learning disabilities who have to go to special schools. I have not run into anyone who has been automatically accepted. Usually you have to go through an appeal process.

10:10 a.m.

That is the kind of study I think it would be useful for the Ombudsman to do. If we could clear up some of these injustices it would cut down not only his case load but my case load. It might not be good for me as a politician, because they say every case I win is worth at least 10 votes, roughly; but it certainly would be in the interests of the public.

Mr. Eakins: Especially in big families.

Mr. Philip: In big families it is worth at least 20.

That is the kind of thing I would like to see the Ombudsman take up, perhaps in the way in which the auditor goes in and says, "This year I am going to specialize and study this particular ministry in some depth and find out what the injustices or the inefficiencies are."

So, too, I think, it would be useful if the Ombudsman were to say: "We are going to initiate a study of the different quasi-judicial bodies and their processes to find out whether there is due process. Maybe we will take part of our budget and commission a couple of lawyers to go and do that; then we will comment and we will see if there is a pattern."

In the same way, Brent Parfitt pointed out in his lecture at the ombudsmen's convention that there were few complaints from jail inmates because of low verbal and other communications skills, and I am pleased that our Ombudsman has people out there in the jails accessing these people.

I would be interested in knowing what kind of model is used in the training of those people who are involved in those things. For example, we know from research done in Latin America, by such people as Paulo Freire, that there are certain techniques of asking questions whereby, instead of the facilitator being in an authoritarian role, although he is in an authority role, the situation is controlled by the most nonverbal illiterate person. I think there are techniques and technologies available in the helping professions, and I would be interested to know what models you may be using in the training of those people who are going into situations like that. Is there an update of professional development for your people?

Randall Ivany talked about how each group has a vested interest that colours its evidence. It would be interesting to know if there is any way in which your people weigh that kind of thing or how you do deal with it.

In a case of assault, the inmate must be seen within one working day to view any evidence.

Can we be assured that this is happening in Ontario? Have you had very many examples of that? Are there any examples or any patterns in any particular institutions, for example, where inmates may have trouble getting hold of the Ombudsman and having an investigator get out there quickly? Does this present any problems?

Another matter that was raised was the whole problem that the mentally ill who are on drugs cannot be interviewed, and I would be interested to know what kind of processes you use to deal with that.

Another point Ivany made was that the biggest role of the Ombudsman is to guard against potential and actual abuse. That means watching for trends. Again, that same pattern went through the ombudsmen's convention, the role of the ombudsman as less of a person solving individual problems, although that case work is important, than of watching for patterns and the case work must be built in. I found interesting some of the answers you gave in terms of computers. Perhaps you can catch patterns as they occur and that is reassuring. Perhaps you can comment on that.

Patrick Smith talked about how leaner government may require a more active role by the ombudsman. That is an interesting problem. It posed a particular problem in British Columbia, more than here in Ontario.

Sandra McCallum talked about how the ombudsman must investigate not just administration but policy. That was a theme that went through that convention. Unfortunately, we did not get a copy of her speech. She did not have a special text. It would be useful if the chairman could write and perhaps get copies of that speech. I understand it was recorded.

One of the points she made was there should be one general ombudsman and not a duplication in departmental ombudsmen. What we see in the federal government is a duplication. I am wondering what position our Ombudsman might have on that. Does he feel that is true, and does he have any feelings about a model on that?

One of the most fascinating presentations at the convention was that by David Flaherty of the University of Western Ontario in the paper called "After 1984: the Protection of Privacy in Canada." It was prepared for delivery at the ombudsmen's convention. It is a paper I have read several times and every time I read it I get a new idea out of it.

It is probably one of the most important issues we are facing. We are facing the problem not

just with privacy invasion by government, but also by private corporations. A good example is that the Canadian Radio-television and Telecommunications Commission licenses cable companies. But in the modern computer facing. We are facing the problem not just with privacy invasion by government, but also by private corporations. A good example is that the Canadian Radio-television and Telecommunications Commission licenses cable companies. But in the modern computer age, there are these aerial companies that are unlicensed by either the federal or provincial governments.

They go around putting aerials on buildings and offering what amounts to a pseudo-cable system or a cable system just for the people in that building. A small computer put on the roof with one of those things can collect unlimited amounts of data on individuals. That could be merchandised; anything from sexual preference to economic factors could be used by sales companies, insurance companies and by a lot of people who really have no business with that kind of information.

It is interesting to note that the Quebec government has as part of its freedom of information bill legislation that protects privacy. New York has also introduced a data protection agency.

There is nothing on credit card applications here in Ontario that requires confidentiality. We have the problem then that government and private enterprise is collecting all this information and all of it can be used not only by government, but also by private enterprise corporations in ways which violate individual privacy.

I would like to know whether the Ombudsman has had complaints about privacy. I assume he did a few years ago, when I raised the issue of the medical records of truck drivers and the Minister of Transport responded by amending the act.

I assume there were complaints at the time when medical records were found in the garbage outside one of the hospitals. It would be interesting to know how many complaints the Ombudsman may be receiving in terms of violation of privacy by individuals.

10:20 a.m.

Mr. Maloney had a number of interesting comments. I will not go into the nine-to-five comment, in which he said he always had a skeleton staff after five. Quite frankly, I did not find this Ombudsman's response to that all that satisfying.

When I first opened my riding office—in the days when I paid for one out of my own pocket; it was volunteer staff and I paid the rent on the thing—we did not get a lot of people, even though it was open on Wednesday evenings. But after a while, after advertising and so forth, then people learned they did not have to take time off work to come and see me as their MPP, that I was there at certain hours in nonwork times.

I suggest to you it is not good enough to simply say, "We stopped it because we were not getting very many calls after five o'clock," unless you have a promotion system of some sort to say, "The Ombudsman's office does not close at five; if you cannot make it during the daytime, come out and see us." Do some kind of promotion, if you want that kind of program.

Mr. Maloney also said that at one time there were 17 different languages represented on his staff. I would be interested to know whether the present Ombudsman has looked into that at all, or has any figures on the present situation.

I picked up an interesting booklet in BC. I understand that it is released now but I got my hands on it before they made it public. Actually, they looked the other way while I stole it—they complied in my borrowing—but I gather it is public now.

This is an excellent little book entitled *Running Things is Sometimes Hard*. It is a manual of the Ombudsman's investigation procedures. It is done with cartoons. It is light reading but at the same time it gives some excellent information. It is an interesting way of dealing with what is seen by some people as a very threatening situation. To walk into that office with its beautiful, stained glass windows and huge carpets and so forth can be a very threatening experience.

When I was working with high school kids in the slums of Montreal, I tried to get them to go to the YMCA because there are some good programs there. I even took them up and they never went back. At first, I had trouble understanding that because there were things there that kids would normally like to do—boxing, phys ed, and all kinds of facilities—and the staff of the Y was quite good.

However, at the same time, the Lions Club or some such service organization opened up a little club in a dirty, grimy basement not far from the school, and the kids were always in there. One rationalization was that little kids were too lazy to walk five or six blocks. But that was not it.

When I talked to the kids, they said, "We feel

comfortable here." While it may be nice for the Ombudsman and his staff to work in plush surroundings, I wonder whether that kind of thing does not scare off people who may feel uncomfortable in that kind of an environment, in the same way they do in a court setting.

I would also like to talk about staffing. As a member of the public accounts committee, one of the things I found most interesting of all the presentations in Washington was that if there was ever a case against merit pay, the federal auditor certainly made it.

If there is a pattern, as I understand there is, of the same people in your office, doing the same job with the same job description and being paid different salaries—salaries not just related to increments based by seniority, but related to other, what we should call subjective judgements—if there are, then I suggest it would be well for the auditor—I mean Ombudsman; it would also be well for the auditor here in Ontario, who still has not understood what he should have learned in Washington when we got these presentations and what anybody with Management 101 would understand, namely, that merit pay is a destructive force when you are dealing with professionals.

Merit pay encourages secrecy; it encourages one-upmanship; it encourages bum-kissing; it encourages manipulation of weak managers by people who know if they are yes-men they get certain monetary and other rewards; it encourages the hiding of information; it encourages a destructive kind of competition.

Having said that, I think you know my views on it and I would be interested in hearing whether or not there are differences in salaries. If so, what is the rationale for it, other than normal seniority or kind of a pseudo-merit pay that is really seniority in disguise?

Those are some of the issues. I think it is important that this Ombudsman look at the quasi-judicial bodies because due process is not being followed, I maintain, in things such as the Housing and Urban Development Association of Canada home warranty program; in the case of my own mother and some other people in the extended-care program.

I would be interested in seeing the Ombudsman here in Ontario publishing principles such as the British Columbia Ombudsman has done, in which we can see principles of good management by government—and of unfair procedures, if you want—so we could have benchmarks with which we can go into workers' compensation, go into the HUDAC home war-

ranty program, go into the Community and Social Services tribunal, and say: "Proper processes were not followed because you violated this principle which the Ombudsman of Ontario feels very strongly about. It is an analogous to this example done by such-and-such a ministry and that example done by another ministry."

Again, I think the single most important issue that we should be facing in the next while is the privacy issue. I will be saying more about that in the Legislature in a different debate.

I think the Ombudsman should address himself to the whole role of the importance of the Ombudsman being active rather than passive—and I am not saying he is always passive, because I know he has come out with some excellent reports at times showing patterns that should be avoided—but active in the sense then that on a yearly basis, he should at least pick certain ministries, I think, and examine them to find out whether justice or injustice is a pattern. He should find out if there are patterns of injustice, rather than simply reacting to cases that come to his attention, in the same way that the auditor examines specific areas to find out whether or not there are patterns or processes that waste the taxpayers' money.

Those are a few of my comments and I appreciate the attention of the Ombudsman and his staff and the members of the committee.

Mr. Chairman: I know this is a trifle unusual, but before you respond, Mr. McArdle, I am going to allow Mr. Eakins to make some comments.

Mr. Eakins: Mr. Chairman, I just want to make a couple of observations very briefly as we review the estimates of the Ombudsman. I see this as an opportunity to review the structure of the office, to understand it more fully—as much as I do the consideration of the financial allocations, for we know that this has been dealt with by the Board of Internal Economy. I see this as an opportunity to learn more of the structure of the office.

I just want to touch on one of the comments which my colleague the member for Kitchener (Mr. Breithaupt) made and that is on the office itself. I hope the Premier and whoever in his competence makes the appointment of our new Ombudsman will take sufficient time to ensure that it is going to be the very best possible appointment at this time, because I see one of the main responsibilities of the new Ombudsman, at least one of the early responsibilities, will be to deal with the image of the office.

10:30 a.m.

As my colleague has said, it is somewhat distressing—and I have served on this committee as long as anyone really and I support this office strongly and have defended it many times—and disturbing that many of my colleagues in the Legislature from various parties question the relevancy, if you will, of the office. I have heard many of them say, "I do not refer too many people to the Office of the Ombudsman," for various reasons. Some say it takes too long and they feel they can handle the complaints themselves. It is unfortunate that feeling exists. I do not say it in opposition to or with any concern about what the office stands for. I just think it is unfortunate that many of the members feel that way.

The appointment of the new Ombudsman is most important. That is why, as far as I am concerned, there should be no rush to make an immediate appointment. The important aspect is that it be a good appointment. We have had two Ombudsmen. I think they have done excellent jobs. First, they have had to firmly plant the Office of the Ombudsman.

When we take a look at the various jurisdictions around the world, I think the Ombudsman in Ontario is known by the office and is the holder of the office perhaps more than in any other jurisdiction. I know it is admired by many jurisdictions. I found at the conference, in Vancouver, it was admired by the Australians and many others. I would like to see the stature of the office maintained.

I think one of the immediate responsibilities of the new Ombudsman is to deal with the public relations or the image of the office so it will be accepted and used by all members of the Legislature and will keep that very high image. As my colleague has said, perhaps Mr. McArdle will show that we are wrong, but in general, listening to many of the members, I feel we could very well be hitting somewhat of a crisis in that respect.

These are just a few of the comments I want to make as we go into it. I look forward to discussing some of the structures of the office also, as we discuss the financial allocations.

Mr. McArdle: Thank you, Mr. Chairman, for the opportunity to reply. I think it was the correct thing to hold off and, instead of making an opening statement, listen to the members. I think they very aptly indicated to us some of their feelings, and in this way I will be able to handle some of them.

A few of the messages discussed by several of the members were the same, but what I will

attempt to do now is to answer each one individually if I possibly can. It may take a few minutes. I have tried to jot down their concerns as well as their extension to us of their full co-operation in the past and their expected continued co-operation with us in the future.

One of the issues raised related to the size of our office. We hear this quite frequently as a matter of fact. Several comparisons have been made between our office and offices throughout the various provinces and throughout the world.

To give you the counterbalance of that on a staggering figure, if you look at—we have some of the people from Nigeria in our office right now. They have seen fit to send over four of their top people for training, which is a compliment to us. We do this quite frequently.

But the other day, when I was discussing with them some of their problems in their jurisdiction, they have over 2,000 on their staff, which is a very staggering amount of people, and their population is 85 million. And we talk about 122. But their jurisdiction is very broad, and this has a bearing on what the staff would be. They investigate banks, insurance companies, private, individual companies—it is endless. The only thing they do not do is investigate the police and the armed services.

Our size in relation to, say, Vancouver where we are talking of a staff size of 37, their size is slightly larger than that. They are approximately 57, in total. There is the Victoria staff which is included in that. So, when Karl was talking about a staff of 37 my understanding is their operation in Vancouver itself is 37. They do have a staff over in Victoria and I understand their total staff is somewhere around 50.

Mr. Breithaupt: That would be to serve about two million people.

Mr. McArdle: That is to serve about two million, yes. So, proportionately, we are not far out.

Also, a lot of the offices take advantage of—when we say “take advantage” it is because they do not have the budget to do this type of thing—a lot of clerical functions which are handled by the government organizations themselves. They do not have, in their act, the ability to set the salary ranges, etc., which we do.

One of the results of staying out of the government computer itself here, is that the salaries are contained within our own office. We do our own personnel and clerical functions. A lot of the other offices utilize government facilities because, again, they do not have the

facilities within their own offices, and they do not have a budget to do it.

People may say, “Maybe if we reduced your budget you would have to be forced to go over to the other area.” That is a decision that somebody else would make. However, because of the way we function, having those functions within the office itself is an advantage to us. If I felt it would be better to be moved into another area I would definitely recommend it to save dollars.

I find that in the utilization of people, they do not just do one specific job, they are people doing many jobs.

It gets down into one of the other issues that you raised of the staffing itself: the administration versus, let us say, the people who are involved in the investigations.

Last year, just before we came before the select committee, as a matter of fact, we anticipated a discussion in that area. We reviewed the number of people we had and their functions. We found that, of the 122, approximately 105 were directly or indirectly involved in the investigations.

The investigators themselves number approximately 45. That number fluctuates depending on the turnover in staff. Supporting them are legal staff and the articling students. They are not investigators as such, however, they do conduct investigations. They work in conjunction with the investigators and, at times, they will do an investigation from start to finish. So there are people who are directly involved.

Would you consider me as an administrator—in either the position of temporary Ombudsman or executive director—involved in an investigation? By rights you would say, “No, the executive director and temporary Ombudsman fulfils another function.” That may be so. However, I am involved in investigations. It will come down to a point where I might have the opportunity to discuss a particular issue with one of the deputy ministers, or it will reach a level where there is no co-operation between some people at a lower level and I will get involved and talk directly to the deputy minister or the assistant deputy minister. That is the same with the assistant directors and directors.

So, directly involved with investigations? No, and, yet, yes. We just do not separate and say there are only 45 people handling investigations. There are the people involved in the area of research, of which there are approximately

nine. So when you add these to that 45 group it comes out to approximately 105.

10:40 a.m.

There are the word processors, who are separate. They are not involved directly on investigations. I do not include them in the 105.

I am giving you a report on regional offices. We just finished a tour of Ottawa, North Bay and Thunder Bay. The purpose was to look at and see how they were functioning in relation to the number of investigations, the number of complaints that were coming in, staffing; whether the fast-action application was working in that area. As a result of our tour, we have now just arranged—this was in the works within the office in Toronto for approximately four or five months—to have the regional offices conduct the investigations in the corrections area.

It is a slow process of moving the various investigations into this area. At the outset we did not want to put everything into the regional offices. The people in regional offices were not equipped to conduct investigations on corrections. We have now given them the background and we have sent in the regular investigators with them. They have toured most of the institutions and they know what their policies are.

They have the manuals within the various regional offices and we sent them a set of instructions. We have explained to them how fast action works. We have explained to them that if there is a problem with a large investigation within the particular area itself, they will automatically contact us in Toronto. We would, if they require, send additional staff up there. It allows us now to change our regions slightly—take the people who were doing these far northern trips and put them into the areas where the majority of complaints on corrections occur, which are in the five—

Mr. Breithaupt: You expect then, if you remove the complement of several of the investigators in the corrections and psychiatric areas on to the regional office—

Mr. McArdle: I am going to use the existing staff in the regional offices. I do not have to change my complement at all. What I am doing is giving them more responsibility and asking them to do more work. I am saying: "Now you have additional responsibility. You now are going to be involved with corrections."

We have done a study on how many correctional complaints come in from the regional offices.

Mr. Breithaupt: There may be a quicker way of handling it even though the work load for the remaining 13 in that group directly will not be cut.

Mr. McArdle: That is right.

Mr. Breithaupt: So you are not, for example, dropping the 13 to 10 and putting one in each of the offices. You are simply sharing the general load, providing it in a different pattern among the existing people.

Mr. McArdle: That is right. We have not changed the amount of complement whatsoever. What we have found is that approximately 70 to 75 per cent of the complaints in that area come from about six of the institutions which can be serviced right out of the Toronto area.

These people were going to face a burnout problem because the load was constant and there was no relief. Not only were they covering the Toronto area, but we then would also have to send them up to the northern areas. There was never a chance for them to have their heads above water. We felt that we would spread the work load and allow these people now to concentrate more in the area of Toronto, where the majority of the complaints come in.

That is one of the things that we have taken care of in the regional office. Fast action? Yes. They definitely utilize fast action in this area, not only for corrections but also for any other complaints that come in. The application of fast action there is exactly the same as in the Toronto office.

With regard to the expansion of it in other areas, when we first looked at Ottawa, we also considered Windsor and London. At this time there is absolutely no indication that we will be going into London or the Windsor area. It would be up to the new Ombudsman, whoever he or she is, to reassess that again.

At this stage of the game, my recommendation would be that it is not necessary. London is very accessible and we find that we can do our swingout through there. The cost factor had to be taken into consideration and at this stage of the game it would not be cost-efficient for us to go into another area.

We have not looked at expansion into any other areas at this stage. The only thing we did consider was Ottawa, along with the Windsor and London area.

This mentions the size of "the bureaucracy." I see this in the newspaper and it disturbs me when we talk about a bureaucracy because personally I do not feel it is a bureaucracy. We

are there to investigate bureaucracy and if we allow ourselves to become another bureaucracy then we are no better off than the people we are supposedly looking at. We have attempted to keep it lean and efficient. We have succeeded in doing that.

The message that comes through loud and clear is the use of the office by the MPPs. As you have indicated, I hope the next Ombudsman will do something to promote this with not only the MPPs but the people at large throughout the province.

At the outset, when Mr. Morand came in, the concentration was to concentrate within the office itself because of the immense backlog. That is now gone. It has been gone for a short period of time. I would agree with you that perhaps now is the time to make a concentrated effort and explain our function, because there are several MPPs who do not understand the Ombudsman's jurisdiction.

We constantly receive complaints from MPPs about municipal matters, and very simple matters. It is obvious they do not understand and perhaps this is due to us. They are busy and we cannot expect them to sit down and be completely aware of what we do and how we do it. Perhaps it is our responsibility to take this message to them.

Every time we go on a hearing we attempt to contact the MPP and notify him we are going into his area so perhaps he or somebody from his constituency office could be there. We review files, if there are any that are open at the time when we are going into that area, in case the individual comes in and we can discuss it with them.

I would agree that the office is not used frequently enough by the MPPs. Again, perhaps it is because we have not taken the message to them and we are remiss in this. It is up to us to make a concentrated effort in taking this to them, explaining to them what we can do. The ones who do understand the office are using our office frequently. There are some MPPs who definitely use the office frequently. They understand exactly what our jurisdiction is.

Mr. Philip: May I comment on that? I do not want to interrupt the Ombudsman, but it would seem to me I do understand what your jurisdiction is and I also understand at what level you can intervene. Occasionally, when I have a particularly difficult workers' compensation case—when I say occasionally I mean I have done it perhaps twice and with some conscience problems because I really did not know it was

your staff's responsibility or duty to do it—I have telephoned. You have excellent staff when it comes to workers' compensation. What would be a real service to MPPs would be a kind of consulting service.

As an MPP, I do not expect you to handle this at this level, but it would be useful for me to have somebody with the kind of expertise your staff has. They are just tremendous, particularly the head of that department. I can call her and say, "Can you give me five minutes because I have a problem?" I always feel as though I should not be doing it. Perhaps she is doing it out of love for her fellow man or perhaps just being good-natured, but it would be useful to have that kind of consulting service, to simply say: "Look, here is a summary of the case. I am going into a hearing in three weeks. Is there something I am missing that perhaps I should look at?" If that happened, we might have MPPs winning a lot of cases at their level so they would not have to end up with you people for you to find out what we omitted and win the case later on. It might save you some work.

Mr. McArdle: We are all in favour of having any of the MPPs phone us at any time about any of the problems they have, regardless of whether it is workers' compensation or not. Just the other week, I had three phone calls within three separate days from various MPPs about particular problems where they had a constituent come into their office. They were not sure of what it was. I said, "No problem whatsoever; send the material in."

I have a meeting tomorrow with two people that was arranged as a result of the MPP. They specifically wanted to talk to the Ombudsman and not to somebody in research or something else like that and we allocated the time and said, "Certainly, this is what we are here for." This is the message I have been attempting to get across, not too well, obviously. But it is going to definitely be one of the objectives to get with the MPPs and explain to them.

10:50 a.m.

The other thing we do not have published as yet is our booklet. We have actually let it run out because we were aware of the fact there was going to be a new Ombudsman appointed and from a cost point of view, rather than having a double production run, we have held off. This is another thing we want to take a look at.

The film is out of date. We are trying to look at a very inexpensive way of doing videotaping and taking the message out about the office as

such, not necessarily promoting an individual. The individual comes along with it. This is what I am attempting to do, make sure of the office as such, what we can do for the citizens of the province and for the members of the Legislature themselves, to tell them exactly how they can use the office and utilize this.

Mr. Philip: What I am suggesting, though, is that I do not want to call you on an individual case. I have problems then also, even though you say this is one of your services, of calling somebody such as the head of your workers' compensation department and taking up her time when she has other responsibilities.

It would be useful if you had somebody who is a technical expert in workers' compensation who would simply be designated to handle this as part of his job. We could say: "I am going into a hearing. Here is what I have. Here is my presentation. I do not expect you to read the whole file, but is there some part of the act that I should be looking for or am I asking for benefits under the wrong section of the act? Are there backup physicians? What do you think?"

If one person were designated, and that person may say he is going to get a legal opinion on this or he is going to refer it to somebody else, but at least somebody we can relate to, we could say to our assistants that this person is there to help them as a technical adviser. That might help, rather than simply saying the whole office is open to us.

Mr. Breithaupt: You would like a liaison person you could feel comfortable calling and feel it is not an interference with that person, that it is part of his or her job.

Mr. Philip: Yes. I feel guilty calling the head of the department or somebody like that.

Mr. McArdle: Actually, the head of the department and ourselves would prefer that you do work through them. I will tell you why; because the allocation of work is their responsibility. If we assign one particular person as liaison then we are always conscious of not knowing how many calls they are getting in, and having to monitor their calls to see whether we can assign more investigations or what.

If the inquiries come through the assistant director of the department, she can give the answer immediately over the telephone or she can say, "I know the work load within my area." Your liaison person may not be there, or the individuals are so heavy on some of their investigations that she can immediately say she can turn it over to so-and-so and get back to you

within a couple of hours. We really prefer you come in that way.

Mr. Philip: It would be useful for me if you were to spell it out in no uncertain terms and send notice to all members of the Legislature that you provide this liaison service and that members are encouraged to use it, so that I do not feel as though I am an MPP who is somehow abusing contacts or friendships I may have in your office, or using the fact that I am a critic or something such as that. If we have a process that everyone knows he is entitled to, then I do not feel shy about using it and I do not feel that I am the only guy who is taking undue advantage of the system.

That would be helpful. It would be helpful to a number of members who perhaps do not know that.

Mr. McArdle: Right. I think your point is very well made.

Mr. Eakins: It is probably one of the ways of improving the image of the office by relating that to the members. It has made them feel they are sort of isolated from it.

Mr. McArdle: That way it is a twofold thing, because it is a notification within our office that this is what we are sending to the MPPs to let them know if they want to come back to the office they are going to be contacting this particular level. It is up to them to make sure that it is handled, etc.

Mr. Philip: Then we feel they are not doing us a favour, but that it is part of their job to do it. That would help.

Mr. McArdle: That is right. Of course, we never feel that somebody is asking us a favour at the level of the MPPs because we feel we are an extension of them and we are here to be of service. I know the feeling a person may have if one phones three or four or five times. It may be because you develop a rapport with the individual and you have the feeling he may be thinking you are taking advantage, as you indicated earlier, of the friendship with the person. If we spell it out that the lines of communication are as follows and this is what will happen, then everybody understands that situation. There are no problems with that.

Mr. MacQuarrie: Mr. Chairman, I certainly agree that this concept of improved liaison between the MPPs and the Office of the Ombudsman is something that should be pursued.

I want to go back to something the member for Etobicoke alluded to earlier, and that is the difficulties we encounter from time to time with

administrative tribunals, be they purely administrative or quasi-judicial. The statute establishing those tribunals provides that their decisions shall be reviewed by the Divisional Court on application. In many situations, for instance in a Health Disciplines Board sitting, where no evidence is taken down as such and counsel may or may not be present, the people involved are not in a position to afford the costs of proceeding further along the lines provided for in the statute, and it is really in a sense outside the Ombudsman's jurisdiction.

I was wondering whether there could be any salutary effect in the case of unsatisfactory decisions, where there are clearly errors in the evidence or in the findings as a result of the evidence, whether some informal approaches could be made in these cases by the Ombudsman when his jurisdiction does not allow him to interfere or to get in and take an active role as he does with the Workers' Compensation Board.

Mr. McArdle: As Mr. Philip pointed out, that is very tricky. I am sure Mr. Bell can appreciate that situation also.

Mr. MacQuarrie: There is the Housing and Urban Development Association of Canada, the Health Disciplines Board and a number of other agencies we are continually coming up against as members in our capacity as Ombudsman for our individual constituents. I disagree a little with Ed that we should solve it, forget it, and pile up the votes.

Mr. Philip: I did not say that. I said that was what was being done. I said the very opposite. I said what should be done is—

Mr. MacQuarrie: One further thing—

Mr. Philip: Wait a minute. You said something and I want to correct the record.

Mr. MacQuarrie: One further thing that should be done—

Mr. Philip: At least listen while I am correcting the record. Since you did not get the point, I will repeat it—

Mr. MacQuarrie: I got the point.

Mr. Philip: I said that should not be what is being done, though we are put into that position. What the Ombudsman should be doing is identifying the process that is wrong so that you and I and the Ombudsman are not always just patching up the problems. We are identifying the process.

Mr. MacQuarrie: Certainly that is what you said, but you overlooked one very significant element. I think there is an obligation on you to

ensure that the system is corrected as far as it can be rather than the individual case being dealt with and forgotten. That is the point.

Mr. Philip: The analogous situation is that, first, I do not have the authority or the research staff to go and do what I have suggested to the Ombudsman would be a useful exercise, analysing whether due process is taking place in the various tribunals. That would be a useful exercise for the Office of the Ombudsman. I do not have that kind of staff. Also, if I did it, it would be seen as my attacking the government, whereas if the Ombudsman does it, the public would see it as a more objective study.

11 a.m.

There is another area I think should be looked at by the Ombudsman. I am suggesting two areas he might want to consider as a study; that is, the whole grievance procedure both in the Legislative Assembly and in the public service.

I hope the Ombudsman will read comments I made in the standing committee on general government, when it was considering the estimates of the Provincial Auditor, on Wednesday, October 26. They concerned what I consider to be inappropriate or ineffective ways in which the employees of the Legislative Assembly can grieve. I can give him more details of the case I referred to, but I am more concerned about the fact the legislation is deficient.

While I am commenting on that, I hope that since we have asked for this before and since I forgot to deal with it in my opening remarks, the Ombudsman will also deal with that very procedure in his own office, on which he was to report back to us.

Mr. MacQuarrie: Mr. Chairman, I have a number of questions. In passing, I refer to questions raised by Mr. Philip with respect to some of the administrative tribunals with which we have encountered difficulties.

First, is there any informal mechanism? If there is no legal jurisdictional mechanism by which the Ombudsman can become involved in these situations, and if that is not a good way to proceed, should the jurisdiction of the Ombudsman be extended to apply in areas like this and, if so, what would be involved in terms of staffing, costs and the rest of it?

I am talking about areas that are particularly troublesome for the individual MPP who has a distressed constituent and yet feels rather helpless in assisting that constituent.

Mr. McArdle: If I may, I will carry on because it comes into that situation. I will not address myself to that exactly at this stage of the game. I would like to go on with my sequence, because if I get into one area, perhaps we will not be answering some of the others. I would like to come back to that point.

Mr. Philip mentioned the committee's non-partisan approach to things. We see that in our interaction with the committee, and we definitely appreciate that and the co-operation we have received, as well as your interest in the success of the concept of the Ombudsman. You have been very supportive of our presentations to you as far as the recommendations denied are concerned and you have pointed out to us areas where we were a little weak and needed to adjust certain things. I think it has been a definite advantage to both of us to work the way we have been working.

As to the process of the selection of the Ombudsman, it is not up to me to make any comment on it whatsoever. It would be totally inappropriate, Mr. Philip.

Mr. Philip: Frankly, I said it for the record.

Mr. McArdle: Right. I mentioned I would take down the various things that had come up. When you talk about the different philosophies within various ombudsmen's offices, about Karl Friedmann initiating investigations on his own, that is something that is definitely within their act. It is also within our act. We have done this. We also do it in perhaps a different way from the way Karl does it, although we do not stretch the nonjurisdictional section of an investigation.

Let us say a complaint comes in and another issue arises out of that complaint, such as the notice of appeal is only five days, which happened just recently in one of the cases we were discussing. The issue was not the five days as such; the issue was totally unrelated to that. But through the investigation we found that it was virtually impossible for this individual, or any other individual in this area, to leave wherever he was, go to the particular office, pick up the application form, fill it out and return it within five days. We felt this was very unreasonable. This was also included in the recommendation back to the actual area itself.

We do look at their internal operations as well as just the single issue as far as the investigation is concerned. Most of this all ties in. The individual who is complaining has a complaint about one particular thing, but it encompasses many more things. As a result, we sort of expand the investigation. In this way, we go back to a

particular board or commission and, say, the policy in relation to the notification of hearing or the length of time allowed—or something along those lines—is addressed and is part of the adjustment and our recommendation to them is to make the change.

In this way, we are doing exactly what you are saying. We are applying this type of philosophy of not just looking at the very narrow issue; we are saying there is more to it than that. As a result, we have found we frequently do not have to initiate a particular thing. We are constantly looking at the various boards or commissions because we have so many complaints that are coming in on them.

This raises another thing about the trends. As I indicated to you at one of the other meetings, because we do have our word processor and the word processing equipment now, we can schedule these types of things. This pertains not only to the corrections area but also to other areas such as the Workers' Compensation Board. Where are the most complaints coming in? In relation to what particular issue? Is it the psychological or organic section? If it is the organic, under what area? It helps us. When we have new employees, we can sort of guide them through lighter types of investigations. These are the advantages.

Mr. Philip: Except that I think I suggested something further than that.

I suggested that just as the auditor takes an area and does an individual study on it, it would be worth while—and there are two areas I am recommending—for you to study due process and see whether or not there is justice or injustice, and indeed even recommend changes in legislation for the Legislature to consider.

One is the area of the tribunals. I saw my Liberal colleagues shaking their heads at it being an interesting concept. The other is the whole area of grievance.

Unfortunately, I gave you the wrong reference. I talked about the Provincial Auditor's estimates when I mentioned how I had raised it in the Legislature. In fact, it was not the auditor's estimates of Wednesday, October 26, 1983. When you are a critic of a number of ministries, you get these things confused. It was the Legislative Assembly for Monday, October 31, 1983, in my leadoff speech on the Management Board estimates. So I correct the record.

I think it would be worth while having you, as a member of the Ombudsman's office, take one or two projects on a yearly basis and examine

the pattern of what is going on in helping the relationship of government to people.

11:10 a.m.

Mr. Breithaupt: Could I expand on that for just a moment, Mr. Chairman, to get some idea from Ed as to whether he sees that to be an initiative the Ombudsman's office would take on its own? Or would that be a reference or a suggestion through the committee? Or would it be from individual members of the Legislature, depending on their interests, or through a particular reference or motion of the House itself?

I am just wondering how you would see this initiative developing—whether it would be as a suggestion in any one of those four ways, or whether it should be by initiative under the general powers of the Ombudsman's office.

Mr. Philip: I think it would be in all ways, and I would like to keep that open. I would use the analogous situation of the auditor, indeed of the American equivalent who tends to take unto himself more powers than our Provincial Auditor does. On a routine basis our Provincial Auditor has simply examined certain departments. He schedules them and does an indepth study of certain departments to find out where there may be government waste, whether objectives are being set, whether the objectives are clear, whether they are measurable, and so forth.

In addition to that, the American auditor, or the equivalent, the General Accounting Office, GAO, will often on its own initiative say, "There seems to be a pattern"—either from what is seen in the news or in the debates of Congress or whatever—"and we think we will look into this whole general area," and they will initiate on their own.

In addition to that, they also accept recommendations from various committees as to areas worth investigating. They even accept recommendations for investigations from individual citizens, as well as from individual congressmen.

The weight they seem to place on it is: first, if it comes from a committee, that is almost a command performance and they try to fit that into their work. If it comes from an individual member, then the decision is influenced by whether this is a partisan, political scheme by this guy because he is out to get somebody, or whether it is a legitimate concern they can look at in an objective way. In that case, it gets a higher priority than from the politician who is facing an election and wants to grandstand.

I would like to see the Ombudsman initiate. Now, maybe the way to get you people to do a specific study, such as the two that I have suggested might be worth looking at, is to move a motion in committee. I am suggesting I have enough grounds that those are two areas, and perhaps Mr. Breithaupt may have one or two other areas, that are worthwhile your considering that.

It seems to me that in spelling out his principles, Dr. Friedmann has started to do that. But, again, I do not think he has gone the full route of saying: "Look, here is something we are going to devote X number of staff to for this year. We are going to examine tribunals, we are going to find out whether due process is being violated and we are going to recommend certain changes across the board."

Another year you might want to look at something like conflict of interest. There are two areas I think are important at the moment, my hobby-horses: First, the due process in tribunals, which has been a constant problem that a number of us as MPPs have suffered with; and second, the whole issue I find upsetting is the grievance procedure which, both in your own office and in the Legislative Assembly—or indeed it goes a little bit farther in the public service—I feel is not at all fair to the employee. That might be another area you want to look at.

Mr. McArdle: Commenting on the jails, you raised one of these points as far as the training modules for employees are concerned, what is their update for professional development for employees themselves? The assaults in the jails—have we handled them? Is there a pattern within the jail regarding complaints, trends, etc.?

I think perhaps I can take the Ministry of Correctional Services and lump it all together and give you an idea. You are aware that there has been a change. The deputy minister has taken a look at the complete operation within corrections, and perhaps appreciates our input and we have had several meetings with him. We felt that he has accepted a tremendous amount of the things we had difficulty with at various institutions, taken some under advisement, discussed them with his internal staff.

Just the other day we had a meeting with their regional directors, explaining to them what our operation is, how it affected them, what it meant to receive a section 19(3) letter at their level, what we understood from the deputy minister their responsibility was. I think it was an extremely

good exchange of where we are coming from and what they are expected to do.

I think it was positive enough that they turned to us and asked whether the director of general investigations and I would attend one of their own regional meetings which is taking place in London a bit later on in November. We will attend there and talk to the superintendent.

What we are trying to do is explain to them exactly how we operate. It is not a fear process. We are there because there is a complaint. We are obliged under the act to investigate this complaint and sort of relieve any tension that they may have when one of our investigators walks in the door. I think we have been very successful to this point and we are going to try to continue this contact and this public relations activity with the various levels within the various ministries.

It comes back to the whole thing you people have raised, that perhaps our contact at the level of the MPPs and notifying them as to what we do and how we do it, is an extension of that. We have concentrated our efforts in one area. We are going to expand this and concentrate it in many others.

Talking about the actual employees, the majority in that staff have their masters degrees in criminology, which is a great asset to us. The ones who do not have their masters work very closely with the individuals who do so they can be trained under them. As I said earlier, there is the training manual within the directorate itself, and when they go out into the field they do so with one of the senior individuals so they are not just taken and thrown out into the field with no training whatsoever.

Mr. Philip: With respect on that point, Don, I did—

Mr. Chairman: If we do not allow Mr. McArdle to complete his response to our initial statements, we are not going to have an opportunity to get it finalized. Could we allow Mr. McArdle to complete his response to all comments brought forward and then we can open it up again and deal with any issues that we still have some concern about.

Mr. McArdle and Mr. Nantais, you have been sitting there for two hours. Would you like to stretch your legs for a couple of minutes? We will break for five minutes.

The committee recessed at 11:20 a.m.

11:29 a.m.

Mr. Chairman: The committee will resume.

Mr. McArdle, do you want to continue with your response?

Mr. McArdle: Yes, Mr. Chairman, thank you very much. I was at the point of discussing the corrections. A point was made in relation to assaults; if there was an assault in jail, how do we handle it and are we there within a day. There is a passage, I think, in Dr. Friedmann's book that says the assaults are handled in a certain way.

What we have is an internal procedure whereby if we are notified of an assault, within 24 hours somebody is at the jail to investigate the matter. Regardless of whether it happens to be in his region or not, somebody would be sent immediately into the institution to take down the particulars. In an assault issue you must get there as quickly as possible and, as a result, we have set this in motion. We have had a few occasions where this has come up and we have been there within the 24-hour period.

11:30 a.m.

With regard to the patterns within the institutions themselves, again I covered this with you at one of the other meetings with the word processor, and it is a constant issue in the office within the corrections area. If they are looking at, say, the Hamilton detention area, where in fact they receive X number of complaints, if a pattern is developing in relation to, say, complaints on food, it would be discussed with the superintendent at that time.

We would say: "We have noticed over the past two or three weeks a certain pattern developing in relation to food. Is there a particular reason for it?" Or it could be the misplacement of an individual's clothing or temporary absence passes. This is a constant ongoing process within the office of looking at particular things. I think it helps to notify the superintendent of various trends that may be taking place within his office itself.

There was a question in relation to the duplication of the Ombudsman. At the federal level they have gone one way, within the provinces they have gone another way, and I was asked to make my comments on the advantages or disadvantages of having one over the other. Again, I do not think I should comment on that. Mr. Maloney commented on it as a past Ombudsman.

The only thing I can say is that if the federals have decided to go one way it is perhaps, from what I can understand in discussing the issue with both Inger Hansen and John Grace, that the country is so large they felt that one

Ombudsman trying to handle all areas within the government was not feasible. But that is only speculation on their part. I do not think it is up to me to question or to comment on how the federal government set it up.

I think the system works extremely well within our own province. Basically that is what I am concerned with: how the system works here. If we can learn from other examples within other jurisdictions, fine; we can apply it. However, the legislators in their wisdom deemed that they would have one who would take care of all areas within the province except for certain nonjurisdictional matters. That is how it is set up and that is how we work within the system.

Complaints about privacy and the violation thereof, do we have many of those. We have had a few; not very many. We have also been notified—and this was a few months ago or even longer than that—of the possibility that freedom of information legislation would be put through and that, as a matter of fact, the commissioner who would be involved in the complaints would be the Ombudsman himself.

This was a public statement, so I am not saying anything that is not known. Where it stands at this time I have no idea, and again it is not up to me to comment on what the House is doing or what the various parties are doing with their legislation. Suffice it to say that when we do receive these, they are investigated. To my knowledge there have been two that have come into the office.

In response to the opening after five o'clock and my comment in Vancouver about the situation, there is always going to be a difference of opinion in relation to whether we should or whether we should not—whether we should be opening the office at eight o'clock or seven o'clock and carrying on to five o'clock, six o'clock or nine o'clock.

All I can say is that I am charged with the responsibility of allocating dollars to do a particular job, based not on a short period of time but on a very long period of time of reviewing what was happening within the office. It was publicized that the office was open or available to the people to contact through the telephone. So few calls were coming in that in my considered opinion the dollars to be allocated to that area did not justify themselves. I am sorry, but I will stand on that position. I feel we are getting more out of dollars by allocating them to doing the actual investigations themselves.

Of the languages spoken within the office,

Mr. Maloney was talking of somewhere around 17 to 19. We have maintained that. One of the things we look at when we hire, as a matter of fact, is whether somebody is able to converse fluently in Croatian or Mandarin or whatever the various languages are.

We constantly update our list. It is sent through the office to the employees saying, "If you have a complaint in another language, here are the people and the languages spoken within the office." At this time, approximately 19 different languages are spoken within the office.

Regarding the indication that we have a very opulent work area, I cannot apologize for that. We have a very excellent office as far as furnishings are concerned. As I indicated quite some time ago, not only to yourselves but also to the Board of Internal Economy, Victoria College expended the money on refurbishing that building. We spent very few dollars on it. Amortized over a 10-year period it comes to about \$25,000, which I think is a very minor amount of dollars in relation to what we have to work in.

The attitude on coming into the front entrance: I agree that sometimes you can make something so intimidating to an individual that he may not want to come in. I think if you walk into the entrance and relate that to the balance of the building, you will notice that we have done very little to make it impressive.

We have intentionally left the lights the way they are; they are not the brightest in the world. The entrance is fairly dull, and employees have asked why we cannot upgrade it. I am inclined to view it slightly differently. I feel the employees have to walk through it for only a few seconds and then they are upstairs.

The individuals who come in are the complainants. I do not think they should feel as though they are in the Taj Mahal. We cannot do anything about the marble; it was there. We cannot do anything about the stained-glass windows; they were there. We cannot do very much about any of the tile flooring. We have a very inexpensive carpet on the floor and very simple furnishings for the reception area, one desk and two potted plants. That is it as far as the entrance is concerned.

If it is intimidating to an individual who comes in, there is absolutely nothing I can do. I think it would be much more intimidating if we jazzed it up. I have no intention of doing that. I would prefer to maintain it as is. When we talk about how plush it is upstairs, the individuals concerned very rarely come upstairs. We have

the reception room downstairs where most of the interviews take place. I would safely say that probably 95 per cent of the interviews take place downstairs so they have no idea as to what is upstairs at all. That is for security and confidentiality.

There was a point raised as to the different salaries at different levels. I would like to go back and discuss something related to that, as a matter of fact. We talk about merit increases within the normal structure of the government. They have a series of classifications which we will say move from one to five. Automatic raises take place at their anniversary dates and once an individual reaches category 5, unless he is reclassified, that is where he levels off.

This was the structure within the office itself. I noticed a pattern developing where the person who reached this level and topped off lost a certain amount of incentive because, if he looked at another individual who joined a year or two after he did and at the anniversary date automatically received a merit increase because he was there in that particular year, perhaps the person who was there first thought this new person was not doing as much work, and therefore his attitude was, "Why should I bother busting myself when this other individual in two years from now is going to be at the same salary level as me?"

11:40 a.m.

I could see this sort of attitude, because it was discussed quite openly in the office. I felt that is not what merit is associated with. I was always under the impression that merit was something you deserved and something you worked for. As a result, we changed the salary level. We eliminated classifications as such and we established salaries at a junior, intermediate and senior level.

We put no restrictions on the amount of dollars, except for budgetary purposes, which was sort of a nebulous statement because my attitude is that if I have an extremely good investigator at a senior level who has no administrative abilities whatsoever, it is a shame to penalize that individual and level him out at a certain dollar level and not pay him at perhaps the same level as an assistant director. He is contributing probably as much, if not more than the other person, and therefore should be paid accordingly.

People seem to say everything should be classified, and there should be a definite distinction drawn between certain levels of responsibility. If somebody is an assistant director, ergo

he should receive X amount of dollars because he does a certain amount of work. I say: "That is fine. I can look at work and I can look at responsibility, not just myself but internally with the directors and assistant directors, as to what contribution is being made. What kind of work is he doing? Should he/she be receiving more money based on what their value is to the office?"

You are definitely going to find, and not because of seniority—part of it is based on seniority because it was in effect before we changed the salary levels. There is nothing I can do about that. But for the current time, salaries are based on the amount of contribution the individuals are making towards the various directorates in which they work. I think it is the fairest way of doing it. Some people may feel that they, in their considered opinion, are worth X dollars more. That is an assessment which has to be made within the office by the people who supervise. This is how raises are given to staff.

I might as well comment on that now, because no doubt it will come up. We constantly assess the individuals within the office. This is the responsibility of the supervisors, the assistant directors and the directors. A performance appraisal is done.

As I have discussed with you several times, it is discussed with the individuals themselves. They are free to make comments if they disagree with the assessment and the objectives are set in that performance appraisal. That is part of the basis on which we look at the individuals, as to what their contribution is to the office, should they receive a raise, should they not receive a raise.

Mr. Bell: Could you comment specifically on the points that Mr. Philip made that at the professional level—you and your predecessors have always described your office from the secretarial level up as professionals—merit pay creates disharmony?

I cannot remember the specifics, such as secretiveness, withholding of sharing responsibilities and other matters. Can you comment on whether that is prevalent in your office and to what extent? If it is, have you just substituted one management headache for another?

Mr. McArdle: In every organization I have been in, there have been comments about the level of competency of individuals, the amount of money they are being paid, whether in fact salaries should be published, all the way down the line.

I have discussed with several firms what their

attitude is with relation to freely discussing salaries within the office itself. There are some firms that have the rule, as one of their terms and conditions of employment, that if there is ever any mention of what the salary of an individual is, it is grounds for dismissal.

I guess there are pros and cons to the whole issue. Personally, I find that there was probably more discussion in the previous time when I was there, as far as salaries and what they felt were inequities in payment were concerned, than there is now.

Mr. Bell: Does that mean there was more discontent then, than there is now?

Mr. McArdle: Yes, I would say there was probably more discontent and it is hard to put one's finger on exactly why. I do not hear too much about it—and somebody might say that I was at a level where I would not hear, but that is not the case at all within the office, since it is such a small office that you hear virtually everything that goes on. There is very little discussion about the salaries.

We have tried to actually look at each individual as an individual and, at the same time, relate him to the other individuals who are doing similar work. There are certain things that enter into that, then, as far as their own outside experience or their background is concerned, or something else that may require us to pay a few dollars more to hire that individual.

Once that happens, it is liable to make a sort of imbalance in the particular area of investigations. We then try to take a look and say: "All right, how much are we out of balance? Is it \$500, is it \$1,000, or is it \$1,200 in relation to this individual and that individual?"

If you went through the salary sheets themselves you would find there is very little difference among members of the investigative staff. In some of the areas there is going to be a difference because one individual has been there for five years and has had the automatic raises, and you may be looking at another individual who has only been there for perhaps a year or a year and a half and has not, proven to me that he is—not not worthy of, but has reached that level of competence that he should be paid the same.

Where we might get into a problem is if, in fact, they put the legislation through on equal work, equal pay, etc. What happens if you have an individual who has been in the office for a five-year period, and, because of the former merit increases and the cost of living allowance is at a level of, let us say, \$33,000? Then

someone else comes in and a year later is doing excellent work. He started at, let us say, \$24,000 to \$25,000 and, because there is now equal work/equal pay legislation, you have a difficult task in evaluating this individual.

This is one of the reasons that we are—not forced to but obliged to make sure that performance appraisals are done so thoroughly, because you have to now have that comparison of saying if, in fact, this person is receiving X dollars and this one is receiving Y dollars less, why? You have to justify this type of situation.

It does cause us a problem. As I see it, I think there was probably more discontent in the past than there is at this time.

Mr. Bell: If I understand it, I guess that the only person's job which is not evaluated is that of the Ombudsman. But there will be 121 job evaluations performed at least once during a fiscal period?

Mr. McArdle: Yes.

Mr. Philip: And these would be in written form?

Mr. McArdle: Yes.

Mr. Philip: With specific criteria that they know they are being judged on and are being marked on?

Mr. McArdle: Yes. There is a form that is discussed with them. There is a whole series of categories: excellent, average, above average, what they have improved on, how well they know the various things—

Mr. Philip: Why can that not be done without attaching it to a pay increase?

Mr. McArdle: When it is done, it is not necessarily attached to a pay increase. It is part of an evaluation.

Mr. Philip: But your own estimates say you gave some people a pay increase because of performance.

Mr. McArdle: Yes.

Mr. Philip: On page 4.

Mr. McArdle: Yes.

Mr. Philip: You also said that some employees claim that they lost incentive because someone else, who was less competent and less experienced, was earning as much or close to them—

Mr. Breithaupt: Some of them have been there longer.

11:50 a.m.

Mr. Philip: Yes. Some of them have been there longer.

I would suggest to you that if that is what they are saying, that is a symptom of a different kind of problem.

Mr. McArdle: That was the problem, and that is what they used to complain about. That was the automatic merit increase, which I disagree with. I do not think we should have it.

Mr. Philip: What I am suggesting to you is that if a person is getting his satisfaction or has to have his ego needs or whatever other needs met by X dollars more than the guy working beside him, basically you have a management problem, a motivation problem.

Mr. McArdle: I did not comment on whether there was an ego problem or not. I do not see where you are coming from in relation to that at all. I would like that explained, because I do not accept at all that position of the ego situation or that there is a management problem.

Mr. Philip: I am coming from the point of view that none of the management research, no motivational research, shows that, once a person has a basic salary that meets his level, giving him more money is in any way a motivating factor.

If you are dealing with chicken pluckers, then you can make them go faster if you give them an extra five cents a chicken. But when you get into the professions, then I suggest that other levels, on Maslow's hierarchy of needs, if you want, have to come into play. The buck only becomes an incentive if it is a symbol for some other need.

I am suggesting, then, that if you think you are going to get better performance out of giving what you call merit pay, which means that some person gets X dollars more than the person beside him with the same job description, you are just creating dissension, bickering, rivalry, manipulation by employees—all of the things that the American federal auditor, or their office of accounting, in their research showed happens. Merit pay, in fact, is a destructive force in any kind of management system.

Mr. McArdle: Merit pay by itself can be considered destructive, if that is the only thing you do. There are other things that we do within the office.

When you take your professional staff at certain salary levels—and it is not necessarily restricted to that. If you look at the act, the act allows the Ombudsman to set the salary, remuneration, terms and conditions. Salary is the amount of wages. Remuneration can be things other than that, and the Ombudsman in the past,

starting from Mr. Maloney and going right through to the present, has recognized this.

Often, money is not the only thing that will satisfy an individual, and in fact, perhaps it is better to give them either extra time off or changed office space or different types of perks. You do not find that in a budget, though. There is no way that I can give you a list that says there are 22 people who were given five days' additional vacation. That does not enter into a cost factor—sure, it is a cost factor in the office, but—

Mr. Philip: You are mixing apples and oranges. If I have an employee and he and I and the other employees see that he has worked late nights or he has a particularly awkward position where he is perhaps doing more front-line work with more emotional input than others, then the staff can accept that he gets a few extra days or that he is burnt out or whatever.

I am saying that if you are paying one more than another and they both have the same job, all of the research I have been able to indicate shows that not only is it not motivation, but in fact it works against building a team. It works against any kind of group psychology I have come upon and that I have trained managers in.

Mr. McArdle: Would you not feel that an individual who is sitting there and who feels, in his considered opinion, be it subjective or not, that he is more valuable than the other individual who is sitting beside him, should be paid more money? If in fact you are paying them both the same salary, you have also instigated a dissension.

Mr. Philip: I say to you then that if I am in a position, as I am as an MPP, where perhaps I do not feel that my salary is adequate—and a lot of MPPs do not; I could and was earning a lot more out there in real take-home dollars and so forth, when you added in some of the other perks in industry, but that is fine. If you think then that I am going to work harder because you pay me more than Jim Breithaupt, I think you are crazy. It is not going to have any effect.

My jollies in the professional job come from the work I am doing, the people I am working with and the satisfaction I get from that job. Now if you are underpaying me and I have to go out and moonlight or practise law or management training or something on the side, then you have a destructive force.

Once you pay a certain professional level, and once I accept that, then paying me \$2,000 more than the guy next to me is only being destruc-

tive. It means then that I will say: "I had better keep my \$2,000. I was going to share this information with Jim Breithaupt, but he might get ahead of me and make that speech in the Legislature, and therefore I better not let him have that information, even though he and I are"—I am using it as an example, not as a reality—"members of the same political party," for example.

Mr. McArdle: Then how would you reward the individual who does more work?

Mr. Philip: The individual who does more work is rewarded in a number of ways. One is that I consult him in the decision-making. Second, I give him the ego satisfaction of my telling him that I think he is doing a good job. Third, if the system is set up in the right way, he is getting a lot of his satisfaction from knowing that he is doing a good job and from getting results. Fourth, I start increasing his responsibility, giving him more exciting and challenging tasks to perform.

Those are the kinds of things which I suggest are all the characteristics of a participatory manager. If you want to use the Blake-Mouton grid, which I am sure you have probably gone through in management school or some time in one of the labs, is the nine, nine manager. Simply motivating by extra bucks, in fact, is a 19th century—

Mr. McArdle: I never indicated to the committee that the only thing that motivated was a salary.

Mr. Philip: If you have a negative thing that is not getting anywhere, why do you use it?

Mr. McArdle: Who said it is a negative thing and we are not getting anywhere?

Mr. Philip: Damn it all, all you have to do is read the research and you will see how negative it is.

Mr. McArdle: Then apply it to our office. How negative is it within our office?

Mr. Philip: There are people in your office who tell me over and over again of the amount of dissension there is in that office because somebody is paid more than somebody else, and they feel they are doing an equal job. That is how destructive it is.

Mr. McArdle: They feel—

Mr. Philip: If you are not listening to your own employees, then you are being quite blind.

Mr. McArdle: We listen to our own employees.

Mr. Philip: You do not listen to the research and you are not listening to your own employ-

ees. I am suggesting that you should change the merit pay system; it does not work.

I see Patrick Reid is here. He listened to the same research in Washington and I think he would also be willing to comment on it.

Mr. McArdle: I think we take all those things into consideration, Mr. Philip. I think we do involve the people in extra responsibilities. We do give them extra perks. We do ask them for their opinions on various things. At the same time they still ask for more money. So obviously the group within our office likes not only the three things I have indicated, plus the perks we give them, but also additional money.

Mr. Philip: Every employee wants more money.

Mr. McArdle: No. You indicated to me that they did not.

Mr. Philip: I did not say that.

Mr. McArdle: You said to me that there was a time when they did not.

Mr. Philip: Now do not quote me out of context.

Mr. McArdle: Then I may have misinterpreted you.

Mr. Philip: Sure, any employee wants more money. I would rather be paid the equivalent of a physician, because I have the same educational qualifications as he does, but I am not. Everyone is going to ask for more money because that is the process. I mean I would enjoy having an extra \$2,000, which I do not have, so that I could spend Christmas in the Bahamas.

Having said that, I am saying that once you have decided on a salary, then you are not going to be motivated once you have accepted a salary, and once you agree to pay a professional salary, then paying one guy an extra \$1,000 more than the other is a very destructive force. All of the research shows that.

12 noon

I am saying the people with whom I have had contact in your own office claim that it is a very demotivating factor. If you are saying that some person is saying he is losing incentive because he is paid the same as somebody else who does not do as good a job, then I say you have a management problem, and that person is not going to be satisfied because you give him an extra \$1,000.

Mr. Chairman: I think we have had an adequate airing of this issue. I wonder if we could move—I guess not.

Mr. Breithaupt: Since we are dealing with salaries, I want to have explained to me another feeling that at least exists among some members I have spoken with. That is that the staff in the Ombudsman office is at a higher pay level compared with others in the public service or those in the private sector doing comparable tasks.

Perhaps we could have a brief explanation of the relationships that do exist, so if that view is not correct, we can lay it to rest right here and now.

Mr. McArdle: I had hoped we had laid it to rest once before when it was discussed with the members. I do not think you were on the committee at that time, so it is worth while reviewing it again in case someone is still under the same misconception.

Quite some time ago there was a salary study done within the office. The salary study was done by an outside firm. The job description of virtually every individual within the office was given to this firm. They then went to both private and public firms, took the job descriptions and consulted with these other individuals. They came back to us with the salary structure, the current salaries we had and what the salaries were in comparison with the two other areas.

It was found that we were approximately five to six per cent higher than the other areas outside to which we were comparing ourselves. This was based on Mr. Maloney's attitude that to have the best staff, perhaps he had to pay a little bit higher to attract this staff. Sometimes you have to do this when you are starting a new organization.

It then proceeded for approximately two years, if I recall correctly, when I looked at the salaries again because there had been salary increases put through and I felt that perhaps we might be unfair because we had not raised the salaries sufficiently and we should update this particular study again.

We were slightly criticized in one of the other committees because we did not receive competitive quotes on the updating of this particular salary study. My explanation for that was that you do not recreate the wheel. The firm we originally used had all the information. It was very quick for us to update the few changes in job descriptions. They went back to exactly the same sources as they had gone to originally and did a comparison over the two-year period as to whether we had fallen behind or whether we had gone ahead too quickly.

When they reported back to us, there was

only one individual who was out of line, and as a matter of fact when they came back with the report, we had already processed the increase for that individual. There was a graph, which included cost of living forecasts and these types of things, with an overlay which indicated where we were and where we had gone, and an overlay for the public and private sector, and we came directly up the graph, virtually dead right on. There may have been a half of one per cent difference, or something like that, in some of the salary levels.

Mr. Breithaupt: So the five per cent differential is still generally the case within the overview of the office?

Mr. McArdle: No. The five per cent actually dropped back. In other words, we were not overpaying on the second salary study. We were paying virtually the comparable salaries they were receiving outside.

Mr. Bell: Both private and public sectors?

Mr. McArdle: Yes. This was the surprising thing. You are right.

Mr. Bell: I do not know how that is reconciled because everybody knows the public sector earns more than the private sector. You pay every secretary in your office up to \$1,500 more a year than we pay any in our office and we are dead on average in the legal profession.

Mr. McArdle: Are you talking about word processors?

Mr. Bell: No, I am talking about secretaries.

Mr. McArdle: We are talking about word processors. The word processors are marked there as secretaries. There are about 14 names in a row underneath the Ombudsman's group.

Mr. Bell: Yes.

Mr. McArdle: They are word processors.

Mr. Bell: Where are your secretaries then?

Mr. McArdle: The secretaries are spread within the other areas. They are really not secretaries, Mr. Bell. Some of them are administrative assistants.

Mr. Bell: I will not debate the merits of a legal secretary and one of yours but I suggest the job functions are fairly comparable.

Mr. McArdle: We have very few secretaries. There are only two, the Ombudsman's secretary and the girl who works for the executive director and also works for all other departments in the office. There is no one girl, except the Ombudsman's secretary, who works exclusively for a particular person. It does not matter. They

are used wherever the work comes from. In other words, if legal is backed up, it will be shifted over to people who are either on word processors or are working on regular typewriters.

Mr. Bell: We can debate that another time. I am just telling you I find that conclusion absolutely remarkable.

Mr. McArdle: It surprised me because I thought some of the areas would be very much out of line. Again, this study was done about two years ago. We are just about ready to go back and do another study to update it. We may find we are slightly out. As far as word processors are concerned, we are dead right on the salaries.

Mr. Bell: The results of the new upgrading would be interesting.

Mr. McArdle: This is what I intend to do. It is not fair to have the people there whose perceived idea of salary would be, "You know, I should be receiving \$5,000 more, etc." We sent this booklet around the office and showed it to the various people saying, "Here is what our salary study showed."

Mr. Chairman: Obviously, there is not a lot of interest.

Mr. McArdle: From my notes, I seem to have covered virtually all the aspects. There could be other things.

Mr. Chairman: One thing Mr. Philip brought up about the grievance procedure was that there had been some sort of commitment to the committee in the past.

Mr. McArdle: He raised this once before and I indicated to him that we have a—it is not a document which is drawn out that says, "You go from A to B, etc.," all the way through on the formal type of situation because we have not had grievances within the office as such. We have had people who have been dissatisfied with a particular area of what they are doing or something like that and it has gone to their supervisor. We have indicated the process. If one is dissatisfied with something, it goes to one's supervisor. From there, if one is still dissatisfied it goes up the line until it eventually reaches the level of the Ombudsman.

I have difficulty in looking at areas to see how far they should be expanded and to what degree they should be formalized. Under the act itself there are certain areas that indicate the terms, conditions, etc. Should these be reviewable? There is the confidentiality. At what level do we have difficulty with it? Is it the substance that is

looked at from the outside? Is it strictly the procedural application?

All these are things we are really having difficulty with. Whatever finalized form comes through, it will go through a legal area to make sure we are not moving away from the act as such.

Mr. Philip: There is nothing under the act that prohibits you from doing what I had suggested you should do.

Mr. McArdle: What did you suggest we do?

Mr. Philip: I thought I made it clear, although you seem to be talking around it. It seems to me you should take a certain area or theme at a particular time and do a study of it. I suggested two themes that you might do, which you have not commented on.

12:10 p.m.

Mr. Chairman: We are talking about grievance procedure.

Mr. Philip: I am sorry. I had to go out for a phone call. I apologize.

Mr. Bell: Mr. McArdle, do I take it that when people think of grievance procedure in a labour relations context they think of one, three or four levels of grievance in written form usually embodied in the collective bargaining agreement? Does that mean your office does not have such a procedure in place in writing? Does somebody who, for whatever reason, feels aggrieved have some process to look to and to follow?

Mr. McArdle: We do not have a written procedure. That is right.

Mr. Bell: But there is as you have said, for want of a better word, an informal procedure?

Mr. McArdle: That is right.

Mr. Bell: What is that procedure? What does it include?

Mr. McArdle: It is the discussion between an individual and the supervisor as to what the problem is. If it is not rectified at that level, it is moved up to the next level to the assistant director or the director.

Mr. Bell: By whom?

Mr. McArdle: By both parties.

Mr. Breithaupt: Or either one.

Mr. McArdle: Or either one. Yes, exactly.

Mr. Philip: That is the basic violation though. At least a public servant—although the Legislative Assembly employees may not have quite the same rights—has some form of independent decision rendered, even though it may not be as

independent as we would like. I find it offensive that the Ombudsman, who is supposed to stand up to adjust the system and comment on everybody else's sins, should not have some kind of procedure. What you are doing is having a trial that is completely weighted on one side, on management's side.

Mr. McArdle: We have not had any trials. We have had nothing.

Mr. Philip: Maybe that means that the people who are grieved know they are not going to get anything by going to the boss.

Mr. McArdle: Maybe it means that they are satisfied. I have not have not had any grievances.

Mr. Philip: How can you stand for a justice system when you have not even implemented one in your own office?

Mr. McArdle: We have a system. The people who are dissatisfied go to their supervisors.

Mr. Philip: Do you consider that adequate?

Mr. McArdle: I have had no occasion to criticize it because I have had no problems with it. If I had problems with it, I would say: "Yes. I had better formalize a very cut-and-dried procedure, because this is the background, this is the experience we have. There are so many problems within the organization."

What we have is input from all the people who are there saying, "Why don't we do the following things?" We say: "It is a good idea. Let us implement it. Let us do it." We have not had that type of problem within the office.

Mr. Philip: I am going to bet that if no formal system existed in the public service, you or certainly Mr. Maloney would have been down on the government with both feet, yet in your own office you can have a system such as this. I find that preposterous.

It is just a case of one system for the other guy; and I am fine, Charlie, because I do not have to obey the same rules as I expect other people to have—and I investigate other people—in their process.

I think that of all people you should be setting the example.

Did you not indicate in your earlier remarks that you were taking a look at this situation?

Mr. McArdle: Constantly, when I first got to the office, this is one of the things that even as an articling student I was looking at because of my background in business and everything like that. This was always going through my mind: Where is the level of who would they talk to; how would they talk to them; what process,

what review? I have to apply these questions in looking at the act and whether they would have the right of a judicial review if they went to a certain level.

I am not the only one who is looking at it. I have actually had two other individuals within the office saying: "Okay. Set up a whole series of areas of possibilities of types of grievances. Where would they go? How would they apply this? Where is the fairness? What type of hearing? Would there be documentation? Would there not be documentation?" It is something that is definitely being looked at but it is an area where one has to be very cautious to get into.

As I say, I am looking at the act. When the Ombudsman is given the right to hire—it specifically states in the act that he is given the right to hire—he is given, therefore, the right to fire. He is also given the right to set the terms and conditions. Do you extend that to what degree of fairness there is within the offices as such?

If, as Mr. Philips said, we are investigating complaints from outside and people are complaining to us, what happens internally to our own staff if they do have a major issue, if someone is fired or something? They can always go to the courts if they consider it a wrongful dismissal, but maybe there are other things that can be done before they ever reach that level. We are involved in looking at this particular aspect.

Mr. Chairman: Are you involving all of your staff in this process? I am wondering if they have been contacted in any way to discover their level of satisfaction with the processes available to them.

Mr. McArdle: We involved the staff once before on one other type of issue we were trying to resolve. It got so cumbersome that it really was counterproductive. What I am doing is taking another level and saying to them, "Okay, cite what in your experience"—because they do have experience—"are the possibilities."

I am telling them to try and draw virtually every type of scenario and then apply that to an internal review: What would be the merits of it? How would it be handled? What happens if it does go outside? And if it does go outside, then what do they have the legal rights of looking at within the offices, at the substance?

Go to the furthest extreme. An individual who does an investigation may come up with a situation that he feels should definitely be supported. When it comes before, say, a case conference, the Ombudsman may say, "No, I

don't think it should be supported." And the person grieves.

If you have, let us say, an outside review area, what are they looking at? To what degree do they look at the substance of the grievance? There is the confidentiality aspect: whether they get into the actual investigation that was conducted as such and the way it was conducted. I am looking at all things related to confidentiality. Do they have a judicial review of certain things? Under the act, there are certain specific things. Does he fetter his discretion by moving outside of the act and doing this?

Mr. Bell: Mr. McArdle, I think you are trying to make a point that Mr. Philip made. A minister of the crown takes two oaths of secrecy, one involving the cabinet and one involving other matters within his particular ministry. There is not a minister of the crown, including the Premier, who is not subject to the grievance provisions of the public service.

If that is the case, and if, having regard to the years of experience, and presumably wisdom, of government and ministers to subject themselves to that, what reason does the Ombudsman have for being different?

Mr. McArdle: I am not necessarily saying we are different, Mr. Bell. I am saying—

Mr. Bell: But in fact you are different because you do not have one.

Mr. McArdle: Well, because we do not have one. We have not had occasion to even have one. That does not say that we should not have one. This is why I was saying that whatever we do has to be implemented correctly; it has to be according to the law; it has to be according to the act as such. You have to take all the various things into consideration in relation to the act.

Mr. Bell: That is not what you said today. There is not—at least I have not heard—a commitment that such a procedure will be put in place, albeit to comply with your statutory obligations. I hear you say, "We are studying it and we are concerned that there are some provisions of the act that may be offended."

Which is it of the two? Are you going to continue to study it without any commitment to implement one, or are you going to implement one so long as you get out the problems?

Mr. McArdle: There is another situation that I also have to consider. At present, being a temporary Ombudsman—and I am not trying to use this as an out; I am really not, because it has been in the back—

Mr. Bell: It is a point well taken.

Mr. McArdle: I do not want to try and implement something to which the next person coming in may say: "My God, what are you turning over to me? This is totally outside the realm of what I want to do. I want to do the following things." Okay, so the new person changes it.

There is a short period of time between now and when the next person is going to be appointed. I am trying to go through all this now and set up a variety of scenarios so that when the new person does come in, I can present them and let him or her make the decision. He or she may say, "I don't want a grievance procedure," or, "I don't think your grievance procedure goes far enough." The decision should rest with whoever comes in.

12:20 p.m.

I have my own feelings about certain things I would definitely do if I were implementing a policy. I am not in a position to implement one now. Somebody can say, "You are a lame-duck Ombudsman." I do not think I am lame duck at all.

We need to be pragmatic. My main responsibility is to make sure that things work within the office, that such things as investigations and reports are handled properly. The implementation of a grievance procedure is certainly not number one on my list of priorities at this time. Whoever is appointed will receive input from me in relation to the review of this type of situation. It is not the first time it has been raised. Mr. Philip is not the first one who has raised this situation.

Mr. Philip: When you study a problem brought to you from someone out there, you prepare a report. Do we take it then that you will table a report with your recommendations with the incoming Ombudsman? Is that what is being written at the present time?

I can study any topic in the fullness of time, for the fullness of time. That does not give me much confidence that anything is being done so that when the new Ombudsman comes in, he or she will have your recommendations. Perhaps, as a committee, we could sit down now with the different scenarios or proposals, or the major proposal, whatever you have concluded, so we can deal with that at an early stage with the new Ombudsman.

My major concern, and the concern of some other members of the committee, is that when the new Ombudsman takes over, we work as a team with him or her and the staff and get on

with the job. Will there be a report for the Ombudsman and will we have access to that report?

Mr. McArdle: He or she will decide whether or not you have access to it. I have not decided yet whether it will be a formal report, pencilled notes or a sit-down discussion with the other people involved. I have not instructed them to give me a formal document which sets out each of the scenarios. We have been constantly sitting and talking about these various things.

I am not at a stage to say to them, "All right, now start writing." There are too many things that have to be looked at and discussed, such as: "What happens if we do this? How does it affect the act? How does it affect the employees?"

Mr. Philip: When you examine any other kind of complaint, you put specific options down on paper so that people can deal with them. I find it hard to understand what you are actually doing other than sitting around, having coffee and chewing the fat over this. That makes me uneasy. It makes me uneasy to walk into a meeting designed to make any kind of decisions or look at any kind of options and find they are not down in black and white or in some kind of form so that we have some instrument with which to deal.

Mr. McArdle: You are misinterpreting my statement that there is nothing down in black and white. Certainly there are certain things down in black and white. There is an agenda; I do not handle meetings unless there is an agenda drawn up with certain specific points we want to cover. But I am not yet at a stage to state that those things have been translated on to a piece of paper for a discussion with you and the select committee. I am not at that stage.

Mr. Philip: Are you at least at the stage to say that, before the new Ombudsman comes into office, you will handle this case in the same way you handle any other case? Will you have certain facts and observations, although perhaps not the conclusions, down on paper so that the new Ombudsman will have something to start work on fairly soon in coming to grips with what—it should be fairly obvious to you—this committee thinks is a serious problem?

Mr. McArdle: That we have at the present time. We have that. I could sit down with the new Ombudsman tomorrow and discuss various aspects, but I am not in a position to be able to draw the conclusions out of it and to formalize the whole document.

Mr. Philip: When will it be a report to the Ombudsman, that he can take and deal with? For God's sake, how many times do I have to ask you a question and how many times are you going to avoid the question?

Mr. McArdle: I am not avoiding the question; I am answering the question. First, I do not know when the Ombudsman will be appointed. If he were appointed tomorrow and I made a commitment to you saying, "Yes, I will have a document," I would be out of my mind.

If he is appointed within two weeks, no, I cannot have a document for him. If he is appointed on December 20, I might have a document for him. If he is not appointed until the following year, then I probably would have a very formalized document.

Therefore, I am not circumventing your question. I am answering your question to the best knowledge I have related to what we are doing and when the new Ombudsman is going to be appointed.

Mr. Philip: Since I am a relatively new member to this committee, how long have you and your predecessor been dealing with this question?

Mr. McArdle: In a formalized form, probably for about four months.

Mr. Philip: Is there any other complaint you can think of that you have had for four months and about which you have not put something down on paper in at least a tentative report with some conclusions on what you are doing?

Mr. McArdle: By that, I am accepting the fact we have not put something down and formalized, which I take exception to. We do have things down, and we do it in the same way we would be doing an investigation.

Yes, there are certain investigations about which we do not have a series of things down, because there is information we have to wait for and we cannot go any further to investigate.

Mr. Philip: There is no file you could point me to, even if you did not want me to read it, and say: "Here is a file dealing with this problem that we started work on in a formal way or in a specific way four months ago. There are X number of documents in there. There are other things we will put together that will eventually go into that file so the Ombudsman, when he comes in can say, 'All right.'" So it is tomorrow; tomorrow the file may be this thick.

Mr. McArdle: Yes, there are some files like that.

Mr. Philip: There are files. In any other case you have a file, a document, something that you can—

Mr. McArdle: I have a file on grievance procedure in my drawer. It has various things in it. It has the Legislative Assembly grievance procedure, part of the grievance procedure of the government, grievance procedures of outside firms, it has my comments on it, it has memos from various people within the staff whom I have asked to do certain things, it has discussion notes.

I have indicated to you that I do have things. You seem to keep on saying that I do not have anything—do I have a file that is comparable to it.

Mr. Philip: And no one in this four months has taken the time to sit down and at least do a summary of what you have?

Mr. McArdle: I have done a summary on it.

Mr. Philip: And that summary is in that file?

Mr. McArdle: That is right.

Mr. Chairman: We have only a few minutes left. Do other members of the committee have additional questions?

Mr. Philip: I have a question as to whether you are prepared to accept, or whether you think it is a good idea to accept, the concept of studying a different subject area on your own initiative or on the initiative of the committee, rather than responding as you have done, albeit occasionally, when you notice patterns in a particular thing, such as corrections.

Are you prepared to accept, just as the auditor takes it on his responsibility to examine certain subject areas, that it might be a good idea for the Ombudsman to examine certain subject areas, not based on specific complaints, but based on the process?

Do you think the two areas I have mentioned, namely, grievance procedures within the government and the area of due process under tribunals, are worthy areas of concentration for, perhaps, the next year or so?

Mr. McArdle: They are worthy areas for consideration. I do not want to commit the incoming individual to something when he may feel that he would rather be investigating another area.

We have always accepted as our responsibility the right to initiate an investigation on our own. We have done that within the office. So I would say that very definitely we will continue

to accept this responsibility and we will give consideration to your suggestions.

12:30 p.m.

Mr. Chairman: I have a couple of quick questions. Strange as this may seem, this one deals with the estimates.

Mr. Breithaupt: I do not know if we can have that.

Mr. Philip: It is out of order.

Mr. McArdle: That is going to be a difficult question.

Mr. Breithaupt: You may have to rule yourself out of order.

Mr. Chairman: Just dealing with your salary increases, how can you assure the committee that you are keeping within the confines of the Inflation Restraint Act?

Mr. McArdle: We have certain documentation that we must fill in for inflation restraint. As a matter of fact, we have sent those over to the Inflation Restraint Board. We went through the whole process as to what amounts were paid, where the increases were and whether they stayed within the guidelines.

There is a very large form—I think there are three sections to it—that was sent over to the inflation board, as a matter of fact, and I think we received acceptance back saying we were well within the guidelines.

One of the difficulties I was totally unaware of was that we had granted a particular item. I had to rescind it, as a matter of fact, because it was going to be over and above the guidelines; it was going to be rolled back automatically, and before we got into that I just sent the memo and said: "It is out of line; it cannot be done. It does not comply with the act."

Mr. Chairman: Okay. I have just a couple of other quick questions.

There was an article—I think it was in last week's Star—about three individuals being considered for the Ombudsman's post, and I am just curious. One of them was indicating that she did not feel she was qualified because she was not a lawyer.

From your chair how do you feel about that? Do you think it is an absolute necessity that the individual holding down that position be someone with legal training?

Mr. McArdle: It is sort of a difficult question to answer if I remove myself as a lawyer.

I guess one of the strong advantages to being a lawyer is not necessarily that you use the law that often sitting in the position now, but at the

times when you do have to make that final decision the legal training is definitely an asset. But there are other people who have very analytical minds who would be similar to the lawyer and his approach in the analytical situation. If they rely on the legal staff and have a very good legal staff, they could definitely be placed in the position of Ombudsman and make the decisions.

From my experience now, having been in the position—and I looked at it from both points as to whether or not it is mandatory that the individual have a legal background—the only thing I can say is that I think it would be an advantage to have the legal background, but I would not say—

Mr. Chairman: You do not see it as a necessity.

Mr. McArdle: I would not say it is a dire necessity at all.

One of the most important things, having been through it, is the pragmatism of the individual, the old expression of having the "street smarts." There are certain things you have an intuitive feeling on because of certain areas, and you are more inclined to ask various things, especially in case conferences. This is where it comes up in the majority of times.

You are sitting there, and there is just something that for some reason or other does not ring true and no one can put a finger on it. I do not know whether it is because of legal training, whether it is because of business training or what it is. I think this is one of the strong attributes that the Ombudsman should have.

Having worked under Mr. Maloney and Mr. Morand, I think both of them had that feeling. I used to notice this in case conferences, as a matter of fact. But both of them were lawyers, so it is unfair to make that type of comparison.

Mr. Chairman: All right. I have one other final quick question.

There was a pretty significant delay between the time Mr. Morand left the office and the appointment of a new Ombudsman. Is that creating any problems in the office in morale and the way the office functions?

Mr. McArdle: I definitely have heard feelings that the individuals have been expressing, such as, "I wish they would get to it and make a decision." I have heard others say, "We are functioning the same as we did in the past."

I think you are always going to have statements like the first from people who like to have permanency around them. It is a sense of security. For other people, it does not bother them in the least. People who are very strong and confident in their operations say, "It does not make any difference to me whatsoever."

I imagine for certain people there is a certain amount of uncertainty and unease, which is a natural thing. We hope we have been able to relax them and carry on. We have made very few changes.

Again, I do not think it is the position of a temporary to drastically modify a lot of the things within. There have been a few adjustments made to areas of meetings and things like that. The number of people has been reduced, etc., but that does not change the overall philosophy and approach to doing investigations on that basis.

Vote 1201 agreed to.

Mr. Chairman: This completes the estimates of the Office of the Ombudsman. Shall these estimates be reported to the House?

Agreed.

Mr. Chairman: Thank you very much Mr. McArdle and Mr. Nantais.

The committee adjourned at 12:37 p.m.

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MacQuarrie, R. W. (Carleton East PC)
Philip, E. T. (Etobicoke NDP)
Runciman, R. W.; Chairman (Leeds PC)

Also taking part:

Bell, J., Counsel to the Committee

From the Office of the Ombudsman:

McArdle, F. E., Temporary Ombudsman





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